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## U.N. court training

Court of Appeals judge travels to Tanzania to teach prosecutors for international criminal courts.

By Rebecca Berfanger

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Indiana Court of Appeals Judge Nancy Vaidik is no stranger to international law.

An active instructor with the National Institute for Trial Advocacy, she has had a number of opportunities to teach lawyers in international venues throughout her legal career, which began in 1980. From Jan. 17 to Feb. 1, she was in Arusha, Tanzania, to train prosecutors for the United Nations' international criminal courts.

But until 2008, one of her most memorable experiences was teaching a room full of solicitors – both Catholics and Protestants – in Belfast, Northern Ireland, how to try cases in court.

“(Here were) two separate groups of people who all look alike, who were working together to try to create a system that was credible for their kids, so their kids would not have to go through what they did,” she said.

In fact, one of the attorneys in that class had been imprisoned for 12 years, “‘at the invitation of the queen,’ he’d say, because he was thought to be a master bomber,” Judge Vaidik said. While serving his sentence, he was granted amnesty as part of the peace accords and became an attorney.

The Catholics in the room thought of him as a hero, while the Protestant solicitors thought of him as a criminal, she said.

While this experience may or may not have led her to the most recent international trip, she said that her colleagues in the international community know of her work.

When 7th Circuit Court of Appeals Judge Ann Williams could not go to Tanzania in late January, she asked Judge Vaidik to go in her place.

Judge Vaidik spent two days traveling



International prosecutor Shelagh McCall (left), and Ottawa Court of Appeals Justice Robert Blair (right), worked with Indiana Court of Appeals Judge Nancy Vaidik (center) in Tanzania.

through four connections, ending with a U.N. convoy in Tanzania from Kilimanjaro to Arusha (a U.N. convoy would also take her from her hotel to the U.N. building during the training). She spent seven days instructing prosecutors and the evenings enjoying local culture and nightlife. She also spent three days on safari with the other instructors and then two days en route to Indianapolis.

She was able to keep up with her work for the Indiana Court of Appeals while traveling in order to jump back in when she returned Feb. 1.

Judge Vaidik's students were prosecutors for the U.N.'s International Criminal Tribunal for Rwanda, located in Arusha, Tanzania; and International Criminal Tribunal for the Former Yugoslavia and International Criminal Court, both located at The Hague in Switzerland.

She was the only American judge among three judges from Canada, a Supreme Court justice from France, and a justice from Senegal. Four senior prosecutors rounded out the faculty who taught

20 prosecutors of international crimes of genocide and crimes against humanity in Rwanda, the former Yugoslavia, the Congo, and Darfur.

The crimes prosecuted in these courts are primarily two crimes – genocide and crimes against humanity, she said. The U.N. defines genocide as killing, preventing births, or causing serious bodily or mental harm to people based on their race, religion, nationality, or ethnicity. The U.N. defines crimes against humanity as killing people but not only based on who they are, it includes torture, sexual assault, enforced disappearances, deprivation of liberty, and other crimes committed against civilians.

As the International Criminal Tribunal for Rwanda and International Criminal Tribunal for the Former Yugoslavia are set to wrap up initial cases this and next year, the next step is the appeals process, set to end in the next couple of years.

“They concentrated their seminar on oral advocacy in order for (prosecutors)

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to be better prepared to go in to argue their cases before the tribunal to either defend the convictions or to prosecute their claims," Judge Vaidik said.

The seminar was based on National Institute of Trial Advocacy trainings with which she was already familiar.

The appellate process for the U.N. courts is remarkably similar to that of the United States and Indiana Court of Appeals in terms of filing and arguing one's case, Judge Vaidik said.

One of the differences between the international courts and the Indiana Court of Appeals is that if the defendant is found not guilty, the prosecutor can appeal, asking the tribunal to reverse the decision and find the defendant guilty.

These cases are also more intricate than a typical criminal case brought to the Indiana Court of Appeals.

"It would be easy to file cases against the people who did the killing, but that's not the point," she said. The role of the prosecutors is to prove a joint criminal enterprise involving the military and political leaders who masterminded the killings and the people who committed the murders and other crimes.

The trials can involve many layers of people that separate the top people on trial from the bottom people who committed the actual killings and other crimes, making for very long trials.

"These are really complicated cases," she said. "The trials can last years."

Years of trials provide for mountains of trial records, not to mention some of the record is public and some of it is confidential.

To break down the appeals process for those at the training, the seven-day seminar started with the best way to open an argument, followed by how to choose the best facts and present them in the context of the law, among other suggestions. The training culminated with a full oral argument to instructors, and instructors critiqued the prosecutors.

One of the complications of the training involved how to explain a system based on civil and common law practices. For the attorneys trained to practice in



Many Massai tribes live in and around Arusha, Tanzania. Judge Nancy Vaidik took the above photo of a Massai mother and child.

**"There was no competition, just cooperation. It was a good example of people from different legal backgrounds and cultures working together."**

Associate Chief Justice of Ontario  
Dennis R. O'Connor

civil law systems, there was some initial resistance about attorneys asking the questions like attorneys trained in a common law system would.

"In civil law systems, basically the judges are doing all the questioning," she said. "But yet when it comes to the appellate level, the civil law (attorneys) do not ask any questions. It was a turning point for our teaching because we realized this is what's happening with the judges on the tribunal. The attorneys have to

respond to two different systems in two contrary forms, and we integrated that into the program," she said.

"When it was all said and done, our civil law friends were asking questions at the final oral argument," she said. "They had come to see the value in it."

Judge Vaidik was also motivated by the passion of the prosecutors she trained, most of whom were in their 30s and not sure where their careers will take them next.

As one Italian prosecutor told her, "I'm following my heart," she said.

"You can't imagine what they've seen in pictures and testimony," she said, adding their level of commitment to the cause is inspiring.

"These are the best and the brightest," who sacrifice a lot and spend most of their time either in Tanzania or The Hague, even though they are from all over the world, including Europe, Africa, and Australia, she said.

The experience also made an impression on her fellow instructors, including Associate Chief Justice of Ontario Dennis R. O'Connor.

"For me it was really interesting to learn what the tribunals are doing in respect to Yugoslavia and Rwanda, a wonderful opportunity to get to know the people who are doing the work for the U.N. I found it an entirely positive experience," he said.

As for working with Judge Vaidik, he said, "I thought she was terrific. She's obviously a very talented judge, very experienced. ... She was a huge contributor to the work of the trainers and faculty for the course. She made a great impression on other faculty members. I think everyone was very taken with her and appreciated her contribution."

"Among the faculty there were people from a lot of different countries so it was important to work closely together and be collegial," he said. "It worked out splendidly. ... There was no competition, just cooperation. It was a good example of people from different legal backgrounds and cultures working together."

The same program will happen next year in The Hague. Judge Vaidik said she isn't sure if she'll be invited to teach but would be happy to do the training again if asked. •